

MF 02-4

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-0000
v.)	Acct # 00-00000
)	NTL # 00-000000 0
JOHN DOE)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John Doe, appearing *pro se*.

Synopsis:

The Department of Revenue ("Department") issued a Notice of Tax Liability ("NTL") to John Doe ("taxpayer") for motor fuel use tax. The NTL alleges that the taxpayer was operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (35 ILCS 505/13a.4). The taxpayer timely protested the NTL, and a hearing was held. After reviewing the record, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer lives in Missouri and purchased a commercial motor vehicle in Indiana. On June 6, 2001, the taxpayer was driving the vehicle to his home and traveled through Illinois without a valid motor fuel use tax license. (Dept. Ex. #1; Tr. p. 6).

2. On July 20, 2001, the Department issued an NTL to the taxpayer for motor fuel use tax showing a penalty due of \$1000 for failure to have a valid license while operating the vehicle on June 6, 2001. The NTL was admitted into evidence under the certification of the Director of the Department. (Dept. Ex. #1).

CONCLUSIONS OF LAW:

The NTL issued by the Department alleges that the taxpayer was found operating a commercial motor vehicle in Illinois without a valid motor fuel use tax license pursuant to section 13a.4 of the Motor Fuel Tax Act (Act) (35 ILCS 505/1 *et seq.*), which provides in part as follows:

"Except as provided in Section 13a.5 of this Act, no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction." (35 ILCS 505/13a.4).

Section 13a.5 provides an exception for motor carriers holding a single trip permit. (35 ILCS 505/13a.5). A "motor carrier" is defined as any person who operates a commercial motor vehicle in Illinois. (35 ILCS 505/1.17). Section 13a.6 of the Act states that if a commercial motor vehicle is found operating in Illinois without registering and securing a valid motor fuel use tax license, then the person required to obtain a license or permit under Section 13a.4 or 13a.5 of the Act must pay a minimum of \$1,000 as a penalty. (35 ILCS 505/13a.6(b)).

Section 21 of the Act incorporates by reference section 5 of the Retailers' Occupation Tax Act (35 ILCS 120/1 *et seq.*), which provides that the Department's determination of the amount of tax owed is *prima facie* correct and *prima facie* evidence of the correctness of the amount of tax due. 35 ILCS 505/21; 120/5. Once the Department has established its *prima facie* case, the burden shifts to the taxpayer to prove by sufficient documentary evidence that the assessment is incorrect. Mel-Park Drugs, Inc. v. Department of Revenue, 218 Ill.App.3d 203, 217 (1st Dist. 1991); Lakeland Construction Co., Inc. v. Department of Revenue, 62 Ill.App.3d 1036, 1039 (2nd Dist. 1978).

In this case, the Department's *prima facie* case was established when the Department's certified copy of the NTL was admitted into evidence. In response, the taxpayer explained that he went to Indiana to purchase a new dump truck for his business, which is a sole proprietorship. The dealership gave him temporary plates and told him that was all he needed to get back to his home in Missouri. The taxpayer stopped at a weigh station in Illinois and received a ticket but also purchased a single trip permit (Taxpayer Ex. #1) in order to complete his trip in Illinois.

Unfortunately for the taxpayer, the circumstances of this case do not permit waiving the penalty. There is no provision in the statute that allows the penalty to be abated based on the taxpayer's failure to know the licensing requirements. Although the taxpayer was misinformed by the dealership, he was not in compliance with the law on the day in question. He should have had the proper motor fuel tax license when he brought his vehicle into the weigh station. It must therefore be recommended that the Notice of Tax Liability be affirmed.

Linda Olivero
Administrative Law Judge

Enter: March 14, 2002